

In re application: BERZOWSKI, William E.

Application Serial No.: 10/065,451

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## **REMARKS**

The Examiner's rejection of claims 1, 2 and 5-13 under 35 U.S.C. 112, second paragraph as being indefinite are respectfully traversed. Applicant has cancelled claims 1-13 without prejudice. New claims 14, 15 and 16 had been added with the Examiner's comments in mind to alleviate any ambiguity or lack of antecedent basis.

The Examiner's rejection of claims 1, 2, 5, 6 and 8-13 under 35 U.S.C. 103(a) as being unpatentable over Gordon in view Cowan or Stanley, and Brown is respectfully traversed. Gordon shows a truck that includes a ladder that is fixed at the rear bumper of the truck that is completely different in function and structure than applicant's claimed invention in new claims 14-16. The Gordon device does not have a support framework that mounts over the cargo bed of a pickup truck, an A-frame ladder or an observation seat at the top of the ladder. The Gordon device is not readily removable from the truck. Cowan shows a ladder mechanism with a chair at the top. The chair is not connected to an A-frame ladder on each side of the seat and is completely different in function and structure. Stanley shows a hunter stand which is an observation tower that has a completely different structure than applicant's portable, removable and storable invention. Because of its construction, the device shown in Stanley must be fastened with screws that have holes drilled through the truck bed in order to give the stand stability. The cargo bed is also taken up with the frame structure losing cargo space. Brown shows a vehicle ramp for an ATV vehicle that is completely different in function than applicant's invention. The Brown device is not concerned with a high center of gravity or stability because

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the Brown device is used to mount a vehicle that can be driven up or pushed up a ramp. The Brown device has horizontal parallel bars that support the vehicle track on each side. It is applicant's position that Brown is not analogous art and provides no teaching whatsoever for a vertical A-frame ladder support structure as claimed by applicant in new claims 14-16. The prior art cited by the Examiner when reviewed by one of ordinary skill in the art does not suggest nor teach applicant's claimed invention. The Stanley reference teaches the necessity of screwing the platform to the floor of the truck bed distorting the truck bed in order to prevent the stand from tipping over because of the high center of gravity. In Stanley, the platform and connection occupies the entire cargo bed from the floor up. The Brown reference does not support a vertical ladder frame, has a different mounting structure because it has a completely different purpose. The primary use in Brown is to have a drive up ramp for an all terrain vehicle. The entire unit in Brown has a very low center of gravity because of its functional nature and vertical stability is not an issue. The cargo bed is not usable in Brown. There is no motivation or suggestion in any of these references to combine them to arrive at applicant's claimed invention. There must be some reason, suggestion or motivation found in the prior art whereby a person of ordinary skill in the field of the invention would make the combination. That knowledge cannot come from the applicant's invention itself. In re Oetiker, 977 F.2d 1443, 24 U.S.P.Q.2d 1443 (Fed. Cir. 1992). The Examiner cannot simply cite different features of the claimed invention from different prior art sources without explaining the motivation to combine or modify the prior art reference. In re Fritch, 972 F.2d 1260, 23 U.S. P.Q.2d 1780 (Fed. Cir. 1992).

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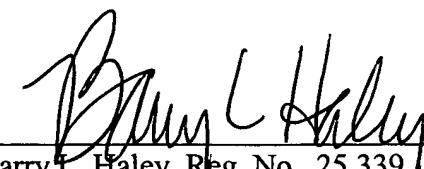
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The Examiner's rejection of claim 7 under 35 U.S.C. 103(a) as being unpatentable over Gordon in view of Jorgensen and Brown is respectfully traversed. Applicant reasserts applicant's comments made above with respect to the Gordon reference and Brown reference. Jorgensen shows a tractor that has a ladder mounted over the front engine compartment. The step ladder in Jorgensen does collapse but does not provide any suggestion or teaching in combination with Gordon and Brown to arrive at applicant's portable, collapsible, observation tower. It is applicant's position that Jorgensen is also non-analogous art. It is applicant's position that a person of ordinary skill in the art when viewing the references cited here by the Examiner would not arrive at applicant's claimed invention.

Claims 1-13 have been cancelled without prejudice. New claims 14-16 clearly claim an observation tower not suggested nor taught in the combination of references cited by the Examiner and are believed to be allowable over the art of record.

If there are any additional charges, including extension of time, please bill our Deposit Account No. 13-1130.

Respectfully submitted,

  
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